



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD203

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Air Force Launches, Aircraft and Helicopter Operations, and Harbor Activities Related to Launch Vehicles from Vandenberg Air Force Base (VAFB), California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the U.S. Air Force (USAF) to take marine mammals, by harassment, incidental to launches, aircraft and helicopter operations from VAFB launch complexes and Delta Mariner operations, cargo unloading activities, and harbor maintenance dredging in support of the Delta IV/Evolved Expendable Launch Vehicle (EELV) launch activity on south VAFB.

DATES: Effective from March 26, 2014, through March 26, 2019.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East West Highway, Silver Spring, MD 20910, calling the contact listed under FOR FURTHER INFORMATION CONTACT, or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also

be viewed, by appointment, during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term “take” means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as: “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

The National Defense Authorization Act of 2004 (NDAA) (Public Law 108-136) removed the “small numbers” and “specified geographical region” limitations and amended the definition of “harassment” as it applies to a “military readiness activity” to read as follows (Section 3(18)(B) of the MMPA): “(i) any act that injures or has the significant potential to injure

a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].” Because the USAF’s activities constitute military readiness activities, they are not subject to the small numbers or specified geographic region limitations.

Regulations governing the take of five species of marine mammals, by Level B harassment, incidental to launches, aircraft and helicopter operations, and harbor activities related to vehicles from VAFB were issued on February 24, 2014 (79 FR 10016). These regulations are effective from March 26, 2014, through March 26, 2019. The species which are authorized for taking by Level B harassment are: Pacific harbor seals; California sea lions; northern elephant seals; northern fur seals; and Steller sea lions. For detailed information on this action, please refer to the final rule (79 FR 10016, February 24, 2014). These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during the specified activities.

This LOA is effective from March 26, 2014, through March 26, 2019, and authorizes the incidental take of the five marine mammal species listed above that may result from launches, aircraft and helicopter operations, and harbor activities related to vehicles from VAFB, California.

The USAF states that these activities may result in take of marine mammals from noise or visual disturbance from rocket and missile launches, as well as from the use of heavy equipment during the Delta Mariner (or similar vessel) off-loading operations, cargo movement

activities, increased presence of personnel, and harbor maintenance dredging. The USAF launch and aircraft activities create two types of noise: continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles; and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. Generally, noise is generated from four sources during launches: (1) combustion noise from launch vehicle chambers; (2) jet noise generated by the interaction of the exhaust jet and the atmosphere; (3) combustion noise from the post-burning of combustion products; and (4) sonic booms. Launch noise levels are highly dependent on the type of first-stage booster and the fuel used to propel the vehicle. Therefore, there is a great similarity in launch noise production within each class size of launch vehicles. The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts.

Acoustic and visual stimuli generated by the use of heavy equipment during the Delta Mariner (or similar vessel) off-loading operations and harbor dredging and the increased presence of personnel may have the potential to cause Level B harassment of any pinnipeds hauled out in the VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

Take of marine mammals will be minimized through the implementation of the following mitigation measures: (1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m); (2) for missile and rocket launches, unless constrained by

other factors including human safety, national security concerns or launch trajectories, holders of LOAs must schedule launches to avoid, whenever possible, launches during the harbor seal pupping season of March through June; (3) the USAF must avoid, whenever possible, launches which are predicted to produce a sonic boom on the NCI during harbor seal, elephant seal, California sea lion, and northern fur seal pupping seasons; and (4) if post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate changes must be made through modification to an LOA, prior to conducting the next launch of the same vehicle under that LOA. To minimize marine mammal takes during harbor activities, the following mitigation measures will be implemented: (1) If activities occur during nighttime hours, turn on lighting equipment before dusk. The lights would remain on for the entire night to avoid startling pinnipeds; (2) initiate operations before dusk; (3) keep construction noises at a constant level (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present; (4) if activities cease for longer than 30 minutes and pinnipeds are in the area, initiate a gradual start-up of activities to ensure a gradual increase in noise levels; (5) a qualified observer would visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of the activities; (6) the Delta Mariner (or similar vessel) and accompanying vessels would enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks; reducing speed to 1.5 to 2 knots (1.5-2 nm/hr; 2.8-3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel would enter the harbor stern first, approaching the wharf and moorings at less than 0.75 knot (1.4 km/hr); and (7) explore alternate dredge methods and introduce quieter techniques and equipment as they become available.

Through this LOA, the USAF is required to monitor for marine mammals. The USAF is required to submit an annual report to NMFS by March 1 of each year. The report will include data collected from the monitoring program. Additional information on the mitigation, monitoring, and reporting requirements can be found in the final rule (79 FR 10016, February 26, 2014). The USAF is also required to submit a comprehensive report, which shall provide full documentation of methods, results, and interpretation of all monitoring during the period of effectiveness of this LOA.

Dated: March 26, 2014.

Donna S. Wieting,
Director,
Office of Protected Resources,
National Marine Fisheries Service.

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